



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 30, 1996

The Honorable Mark W. Stiles
Chair, Calendars Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-096

Re: Whether chapter 59, Code of Criminal
Procedure, authorizes a law enforcement
agency to purchase and own certain property
(ID# 38856)

Dear Representative Stiles:

Chapter 18 of title 10 of the United States Code governs military support for civilian law enforcement agencies. *See* 10 U.S.C. §§ 371 - 381. The chapter permits the Secretary of Defense to provide a variety of services, equipment, and personnel to federal, state, and local law enforcement officials, as long as any support provided "will [not] adversely affect the military preparedness of the United States." *Id.* § 376. Included in those services which the Secretary is empowered to perform is the sale to states and units of local government of equipment suitable for counter-drug activities.¹

¹Section 381 of title 10 governs the procurement by state and local governments of law enforcement equipment suitable for counter-drug activity and provides the following:

(a) Procedures.—(1) The Secretary of Defense shall establish procedures in accordance with this subsection under which States and units of local government may purchase law enforcement equipment suitable for counter-drug activities through the Department of Defense. The procedures shall require the following:

(A) Each State desiring to participate in a procurement of equipment suitable for counter-drug activities through the Department of Defense shall submit to the Department, in such form and manner and at such times as the Secretary prescribes, the following:

(i) A request for law enforcement equipment.

(ii) Advance payment for such equipment, in an amount determined by the Secretary based on estimated or actual costs of the equipment and administrative costs incurred by the Department.

(B) A State may include in a request submitted under subparagraph (A) only the type of equipment listed in the catalog produced under subsection (c).

(C) A request for law enforcement equipment shall consist of an enumeration of the law enforcement equipment that is desired by the State and units of local government within the State. The Governor of a State may establish such procedures as the Governor considers appropriate for administering and coordinating requests for law enforcement equipment from units of local government within the State.

(continued...)

You inform us that, in June 1995, the Department of the Army transferred two helicopters to the state and that, subsequently, the helicopters were transferred to the Jefferson County Sheriff, pursuant to these provisions. In accordance with the agreement transferring the equipment, the helicopters must be under the direct control and exclusive use of the Jefferson County Sheriff and must be used for direct counter-drug enforcement. Transportation and transfer costs, as well as any maintenance costs were paid by the Jefferson County Sheriff with proceeds derived from chapter 59 of the Code of Criminal Procedure, which permits state and local law enforcement agencies to seize and have forfeited to the law enforcement agency after a judicial hearing certain "contraband," as defined by that chapter, *see* Code Crim Proc. art. 59.01(2).

¹(...continued)

(D) A State requesting law enforcement equipment shall be responsible for arranging and paying for shipment of the equipment to the State and localities within the State.

(2) In establishing the procedures, the Secretary of Defense shall coordinate with the General Services Administration and other Federal agencies for purposes of avoiding duplication of effort.

(b) Reimbursement of administrative costs.—In the case of any purchase made by a State or unit of local government under the procedures established under subsection (a), the Secretary of Defense shall require the State or unit of local government to reimburse the Department of Defense for the administrative costs to the Department of Defense for such purchase.

(c) GSA catalog.—The Administrator of General Services, in coordination with the Secretary of Defense, shall produce and maintain a catalog of law enforcement equipment suitable for counter-drug activities for purchase by States and units of local government under procedures established by the Secretary under this section.

(d) Definitions.—In this section:

(1) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(2) The term "unit of local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

(3) The term "law enforcement equipment suitable for counter-drug activities" has the meaning given such term in regulations prescribed by the Secretary of Defense. In prescribing the meaning of the term, the Secretary may not include any equipment that the Department of Defense does not procure for its own purposes.

Your concern focuses on the sheriff's use of chapter 59 proceeds in paying for the equipment. You ask:

Does the use of Chapter 59 proceeds to acquire the helicopters give the Sheriff's office right to title to the helicopters?

There is no question that federal law authorizes the Secretary of Defense to sell the equipment about which you ask; at issue is whether the Sheriff of Jefferson County may use chapter 59 proceeds to purchase such property and whether title to such property would reside in the office of the county sheriff. On the basis of Attorney General Letter Opinion No. 96-012, we answer your question in the affirmative.

In Attorney General Letter Opinion No. 96-012, this office concluded that a county sheriff may use chapter 59 proceeds to purchase and take title to a building that was to be used for law enforcement purposes, specifically to house the sheriff's anti-drug task force, so long as certain procedural requirements of chapter 59 were followed. The opinion, relying on the provisions of article 59.06, which governs the disposition of seized property declared:²

²Article 59.06 of the Code of Criminal Procedure provides in pertinent part:

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited according to the terms of the agreement into one or more of the following funds:

....

(3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or

....

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to audit provisions established under this article. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded. The head of the agency or attorney representing the state may not use the existence of an award to increase a salary, expense, or allowance for an employee of the attorney or agency who is budgeted by the commissioners court or governing body unless the commissioners court or governing body first approves the expenditure.

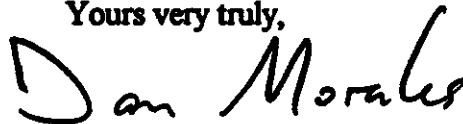
Thus, in answer to your specific question, we hold that the sheriff may use the proceeds from the sale of property seized as contraband under chapter 59 for the purchase of a building, provided he first submits a detailed list of all such expenditures to the commissioners court, and subject to the commissioners court's requirement, if exercised, that he deposit not more than ten percent of those proceeds in the county treasury for use on behalf of the chemical dependency programs described in subsection (h) of article 59.06.

Attorney General Letter Opinion No. 96-012 (1996) at 2. We know of no reason why proceeds from the disposition of property seized under chapter 59 of the code could be used to purchase and take title to real property to be used for law enforcement purposes, in that instance a building, on the one hand, but could not be used to purchase personal property to be used for law enforcement purposes, on the other. Therefore, we conclude that a county sheriff may expend chapter 59 proceeds to purchase and take title to two helicopters pursuant to chapter 18 of title 10 of the United States Code.

S U M M A R Y

A county sheriff may expend proceeds derived from chapter 59, Code of Criminal Procedure, to purchase and take title to personal property to be used for law enforcement purposes, so long as the procedural requirements of chapter 59 are followed.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style.

DAN MORALES
Attorney General of Texas